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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2596 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMED HANIF @ ANNU YUSUFMIYA SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for the Petitioner.

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for the Respondents.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 27.1.2004. By the impugned order, the petitioner is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the order of detention, the petitioner is also served with the grounds of detention.

In the grounds of detention, there is a reference about five pending criminal cases against the petitioner. All these cases are filed under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. Except the said cases, there is no other material as the authority has not recorded statement of any witness.

The Authority, after considering the said cases, has detained the petitioner under PASA. The said order of detention is impugned in this petition.

The learned Advocate for the petitioner submitted that the petitioner was already in judicial custody at the time when the detention order was passed, as he was released on bail only in connection with the case at serial No.1, but regarding cases at serial Nos. 2 to 5, he was already in judicial custody. There is nothing to suggest that even bail application is pending. The learned Advocate for the petitioner, in this connection, relied upon the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675, wherein the Apex Court has observed as under :-

" ... ...

4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

The authority has not stated in the order as to on what basis it has reached the subjective satisfaction that, on presenting the bail application, the petitioner will be released on bail. Since it cannot be said that the authority has properly applied its mind in reaching the subjective satisfaction, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

Ms.Archana Raval, learned AGP, however, submitted that the petitioner is repeating the offences under the Bombay Prohibition Act. However, it is for the concerned Public Prosecutor to oppose the bail application and, in a given case, it can be successfully pointed out that after being released on bail, the accused is repeating such type of offences under the Bombay Prohibition Act. Naturally, it is for the concerned Public Prosecutor to press into service the said contentions and it is for the concerned Magistrate to examine the points at the time of considering the bail application. On this point, however, this Court is not expected to express any

opinion.

(P.B. Majmudar, J.)

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(apj)